

## **REMARKS**

The present response addresses the points raised in the Final Action mailed on May 16, 2005. Applicant hereby requests further consideration of the application in view of the amendment above and the comments below. Applicant submits that the amendments place the case in condition for allowance, or, alternatively, in better form for appeal.

### **Support for Claim Amendments**

The amendments presented above have been made to recite particular features of the inventions so as to expedite the prosecution of the present application to allowance in accordance with the USPTO Patent Business Goals (65 Fed. Reg. 54603, September 8, 2000). These amendments do not represent an acquiescence or agreement with any of the outstanding rejections.

Claims 4, 29 and 34-44 are canceled without prejudice. Claims 9, 10 and 28 are amended herein to more particularly point out what Applicant regards as the invention. New Claim 45 is directed towards a particular embodiment of what Applicant regards as the invention. Support for the new claim can be found on pages 21 and 22 of the specification. The rejections of the pending claims are discussed hereinbelow in the order that they are presented in the Final Action

### **Claim Rejections - 35 U.S.C. § 112: lack of adequate written description**

Claim 4 is rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the written description requirement. In view of Applicant's cancellation of Claim 4, Applicant believes that the instant rejection has been rendered moot, to which applicants respectfully request that this rejection be withdrawn.

### **Claim Objections**

Claims 9, 10 and 28 are objected to because of informalities. Claims 9, 10 and 28 are amended herein to recite "An isolated host cell" as suggested by the Examiner. Applicant believes that these amendments address the objections of the Examiner, however, should the

Examiner find that these amendments do not overcome the objections, Applicant respectfully solicits the Examiner for suggestions as to a satisfactory amendment.

**Claim Rejections - 35 U.S.C. § 112: indefiniteness**

Claim 1 is rejected under 35 U.S.C. § 112, first paragraph, for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

The Examiner alleges that Claim 1 lacks proper antecedent basis for the language “said hTR gene” because the previous limitations do not recite “hTR gene” but recites “(hTR).” Applicants respectfully points out to the Examiner that the language of Claim 1 as presented on page 4 in the Amendment of July 14, 2003, a copy of which is enclosed (Tab A), and in the present listing of claims recites the language suggested by the Examiner in the Final Action to address this rejection. Applicant therefore believes that Claim 1 as is presently of record is not indefinite and respectfully requests that the instant rejection be withdrawn. However, should the Examiner find the present explanation and response unsatisfactory, Applicant respectfully solicits the Examiner for further suggestions as to a satisfactory amendment.

**Claim Rejections - 35 U.S.C. § 102**

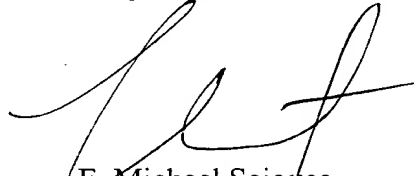
Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,583,016 to Villeponteau et al. In view of Applicant’s cancellation of Claim 4, Applicant believes that the instant rejection has been rendered moot, to which applicants respectfully request that this rejection be withdrawn.

Attorney Docket No.: 9446-7  
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Filed: August 25, 2000

### CONCLUSION

Applicant believes that the points and concerns raised by the Examiner in the outstanding Final Action have been addressed in full, and it is respectfully submitted that this application is in condition for allowance. The Examiner is encouraged to telephone the undersigned at 919-854-1400 should there be need for resolution of any outstanding issues.

Respectfully submitted,



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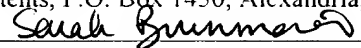
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I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

  
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Sarah Brunmeier

In the Claims:

Please amend the claims as follows:

1. (currently amended) An isolated promoter sequence ~~derived from~~ for the human telomerase RNA ~~(TR)~~ (hTR) gene promoter, ~~having approximately 505 bp~~ comprising at least 272 bp upstream and at least 69 bp downstream of the a transcription start site ~~or a fragment thereof, capable of initiating of said hTR gene as~~ shown in Fig 4a (SEQ ID NO: 36), which initiates transcription of DNA operably linked downstream of said promoter.
2. (currently amended) ~~An~~ The isolated promoter sequence according to claim 1 wherein the promoter sequence is construct hProm505 as shown in Fig 4a (SEQ ID NO: 36) ~~and Fig 5a.~~
3. (currently amended) ~~An~~ The isolated promoter sequence according to claim 1 wherein the promoter sequence is construct hProm867-230 bp in length ~~starting at position 42 bp~~ as shown in Fig 4a (SEQ ID NO: 36) ~~and Fig 5a~~ upstream of the transcription start site.
4. (currently amended) ~~An~~ The isolated promoter sequence according to claim 1 having the sequence as shown in Fig 4a (SEQ ID NO: 36) ~~or mutant, allele, derivative or variant thereof~~ modified by insertion, addition, deletion or substitution of one or more nucleotides wherein said modified promoter has at least 60% homology over at least 40 nucleotides of said isolated promoter sequence of claim 1.
5. (currently amended) ~~An~~ The isolated promoter sequence according to claim 1 operably linked to a heterologous nucleic acid coding sequence or gene.
6. (currently amended) A nucleic acid construct comprising ~~a~~ the isolated promoter sequence according to claim 1, operably linked to a heterologous gene.